

Guidelines for Expunction Hearings The Register

Child Abuse



Ministry of
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THE CHILD ABUSE REGISTER
GUIDELINES FOR EXPUNCTIONS
(THE CHILD WELFARE ACT 1978, SUB-SECTIONS (13) to (21) OF SECTION 52)



The directory and proposed **TABLE OF CONTENTS** have been developed by the Attorney General for the Department of Justice.

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Requirements of a Name on the Register

There are two requirements which must be fulfilled in order to place a name on the Register. They are:

1. That the information of address above has been verified in accordance with the Statute and Code Book for the Management of Child Welfare Cases under the Child Welfare Act, 1974, or The Adoption and Placement Regulations, 1974, para. 10 or 23.
2. That the alleged crime is sufficiently linked to the "barbaric" and of the worst species, or a clearly enough part of a pattern or condition of abuse, for it to warrant a report to the Registrar. Reports of crime are circulated as Guidelines for Reporting to the Child Abuse Registry, February, 1981.

These requirements are the two specific aspects the Director of Child Welfare for the Registrar Department referred to as the Director must ensure have been properly addressed by the Children's Aid Society which has submitted the report.

When an individual's name has been placed on the Register, before it can be removed, notice that the name has been so placed, the reasons for the placement and the fact that they have the right to appeal and to request an expunction hearing.

Introduction

The practice and procedures outlined in this paper have been developed by the Ministry for the following reasons:

1. To encourage an expeditious handling of the registered person's request that his/her name be removed from the province's child abuse Register.
2. To maximize the flexibility permitted and indeed encouraged by the Child Welfare Act and the Statutory Powers Procedure Act both of which dictate procedure for expunction matters.
3. To ensure as far as possible that matters properly at issue in an expunction Hearing under s.52(14) of the Child Welfare Act remain distinct from the separate and distinct responsibility of the Court to determine the child's need for protection under s.28 of the Act.

These guidelines are for the use and information of Directors of Child Welfare, persons designated by a Director to conduct an expunction Hearing on the Director's behalf, the registered person who is requesting that his/her name be removed from the Register, the Children's Aid Society and any other person the Director specifies as a party to the Hearing (see s. 52(15) of the Child Welfare Act).

Placement of A Name on the Register

There are two requirements which must be fulfilled in order to place a name on the Register. They are:

- a) that the information of alleged abuse has been verified in accordance with the Standards and Guidelines for the Management of Child Abuse Cases Under The Child Welfare Act, 1978, by The Children's Aid Societies, February, 1981, p.p. 11 to 25.
- b) that the alleged abuse is sufficiently toward the "serious" end of the abuse spectrum, or is clearly enough part of a pattern or condition of abuse, for it to warrant a report to the Register. Reportable abuse is discussed in Guidelines for Reporting to the Child Abuse Register, February, 1981.

These requirements are the two specific matters the Director of Child Welfare for the Register (hereinafter referred to as the Director) must ensure have been properly addressed by the Children's Aid Society which has submitted the report.

When an individual's name has been placed on the Register, he/she is sent written notice that the name has been so placed, the reason for the placement and the fact that they have the right to appeal and to request an expunction hearing.

Requests for Expunction

Requests for expunction should be received in writing except in unusual circumstances. They may originate with the alleged abuser, his/her lawyer or other agent, or a Children's Aid Society.

Care must be taken in the case of a telephone call to ensure that the person calling is in fact the one to whom a letter has been written or a bona fide agent of that person. This can normally be done by a return phone call. Without revealing any details of the registration itself information may and should be given about the purpose and general procedures of the Register and of expunction Hearings.

Frequently reassurance about the confidential nature of the Register or explanation about 'reportable' abuse and what may cause an expunction, and/or review of the procedure for a Hearing may result in the withdrawal of requests for expunction.

However, when the alleged abuser or his/her agent requests expunction, the Director of Child Welfare may:

- a) exercise the authority given to him by s.52(10) of the Child Welfare Act and upon consultation with the reporting Society remove the name or otherwise amend the Register.
- b) decide to proceed with a Hearing under s.52(14) of the Child Welfare Act before deciding whether or not the name should be removed.

The issues to be determined by the Director are:

- a) whether the information contained in the Register is in error e.g. the alleged abuse did not occur, or the person named is not the person responsible for the abuse.
- b) whether the information should not be in the Register e.g. the abuse is not "reportable abuse" as defined in the Guidelines.

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Once a request has been made, the following procedures shall be followed:

- The Registrar, in consultation with the Program Supervisor, contacts the Children's Aid Society to determine if the two requirements for placing a name on the Register have been met, and/or if anything has occurred since the registration which would warrant the removal of the name.
- If the requirements have not been met, or if there is other reason to question the registration, the Children's Aid Society recommends to the Director in writing that the name be expunged. If the Director agrees with the recommendation, the alleged abuser's name is expunged. The alleged abuser and the Children's Aid Society are informed of the expunction in writing.
- If the requirements have been met and nothing has occurred since the registration which would warrant the removal of the name, the Children's Aid Society recommends that the name remain on the Register. If the Director agrees with the recommendation, the decision as to whether or not the name should be removed will be made after a Hearing has been held by a Hearing Officer appointed by the Director.
- The outcome of a related protection or criminal court proceeding may not necessarily affect registration. However, if there is a finding of fact - as opposed to charges withdrawn, stayed or dismissed that indicates:
 - a) the incident giving rise to criminal charges and/or a child welfare application was not child abuse, or
 - b) the person named as alleged abuser was not responsible for the abuse,
 then expunction will be considered in the light of the court's findings, bearing in mind the Divisional Court's statement that entries in the Register should not be limited to cases in which abuse has been established by standards of proof applicable to criminal or civil action.
- In some circumstances, a name may be expunged without a request from an alleged abuser or a Children's Aid Society, at the initiative of the Director of Child Welfare; for example, if an alleged abuser dies. Normally, however, such action will be taken at the request of a Children's Aid Society.
- The Director retains the right in all cases to decide whether a name should be expunged, or whether a Hearing should be held to decide this issue.

Preliminary Steps to a Hearing

The Director informs the alleged abuser or his agent in writing that before it is decided whether or not to remove his/her name from the Register, the alleged abuser has the right to a Hearing under s.52(14) of the Child Welfare Act. If the alleged abuser notifies the Director that he/she wishes to proceed, steps are then taken to set up a Hearing.

The first step is the appointment by the Director of a Hearing Officer who then assumes responsibility for the conduct of the Hearing and the decision regarding expunction. The hearing officer will be a person with expert knowledge of the Child Welfare Act and Statutory Powers Procedures Act and thoroughly versed in the handling of such hearings.

It is a basic principle of law that a party has a right to know the case he is expected to meet - before he has to meet it. For the purposes of an expunction Hearing, that means that the registered person (or his agent) is entitled to reasonable information about the allegations made against him/her (see s.8 of the Statutory Powers Procedure Act). Normally, the alleged abuser will have been told by the Children's Aid Society when the investigation and verification of the abuse is complete that he/she will be reported to the Register and the reasons for the report.

If the alleged abuser requests information about the allegations against him/her when a Hearing has been arranged, the Society should provide him/her or his/her agent with any written or documentary evidence it intends to enter as exhibits, and a general summary of the evidence which it will present.

Similar information may be requested by the Society from the alleged abuser or his/her agent.

If court proceedings are pending or in process, either party may request an adjournment of the Hearing to a later date.

Once the arrangements for a Hearing have been completed, parties must be given formal notice at least 10 days in advance of the Hearing date.

The Hearing

The Hearing Officer should know virtually nothing about the case before the Hearing in order to ensure that his/her objectivity is maintained.

The issues to be determined by the Hearing Officer are:

- a) whether the information contained in the Register is in error e.g. the alleged abuse did not occur, or the person named is not the person responsible for the abuse.
- b) whether the information should not be in the Register e.g. the abuse is not "reportable abuse" as defined in the Guidelines.

The type of questions which the Hearing officer should bear in mind are:

What facts presented at the Hearing indicate actual abuse of the child named in the report to the Register?

What facts point to the responsibility of the registered person for the alleged abuse?

How credible is the evidence?

Every effort should be made to keep the Hearing as informal as possible. It should be held in a non-threatening setting. It is not mandatory to have counsel present.

The Hearing Officer has the right to conduct the Hearing as he/she sees fit subject to the provisions of the Statutory Powers Procedure Act.

- 1) He may hold a Hearing in camera if he believes it is desirable in the interests of the parties, and their interests supersede the principle that hearings be open to the public.
- 2) If the Hearing is in camera, observers may be allowed at the discretion of the Hearing Officer if all parties agree.
- 3) If the Hearing is public, the Hearing officer may request that the name of the child (or children) not be used in any report of the proceedings.
- 4) If a child (or children) is to be a witness at a Hearing, the Hearing Officer will ensure that the question of representation for the child has been thoroughly considered.
- 5) "Party" status allows a person or agency to be represented by counsel or an agent, but parties may choose not to be represented. Parties may call witnesses and present submissions. They may also cross-examine witnesses to the extent required for a full and fair disclosure of the facts. Normally, no character witnesses will be heard.

- 6) Witnesses may be asked by the Hearing Officer to take an oath or make an affirmation to tell the truth. Witnesses who are not parties to the Hearing may be advised by counsel or an agent as to their rights but that counsel or agent takes no further part in the Hearing, unless the Hearing Officer permits. If the Hearing is not open to the public, counsel or an agent for a witness who is not a party may only be present in the hearing room when that witness is giving evidence.
- 7) The Hearing Officer should exclude witnesses who are not parties until they testify.
- 8) Hearsay evidence is admissible, but will be weighed accordingly.
- 9) The Hearing Officer has discretion under s.7 of the Statutory Powers Procedure Act to proceed with the Hearing, even if a party does not appear, whether that party be the registered person, the Children's Aid Society or any other person specified as a party by the Director of Child Welfare. If the applicant does not appear, and gives no acceptable reason for his/her absence, no Hearing is necessary. The Children's Aid Society should simply make a summary statement for the record.
- 10) There is no need for a court reporter to be present or for a transcript to be prepared. Notes and recording by the Hearing Officer are sufficient. If a court reporter and/or transcript are requested by a party to the Hearing or by the Ministry, the party who makes the request is responsible for the costs.
- 11) Hearings proceed as follows:
 - a) the Children's Aid Society presents evidence and argument to show how the case has been investigated and verified, and how a judgement has been made to report to the Register. The Society is required to present some credible evidence to show that abuse occurred, and some credible evidence to show that the person named as alleged abuser was responsible for the abuse. Although the Hearing is concerned with a specific incident(s) of abuse, the Society may present evidence which points to a "condition" or "pattern" of abuse in support of its decision to place the name on the Register.
 - b) the applicant is afforded the opportunity to present evidence and argument to show that the investigation and verification were incomplete or in error, or that the abuse was not reportable.

It is not necessary to prove the information on a balance of probabilities or beyond a reasonable doubt. All that is required is some credible evidence supporting the registration. The Hearing Officer will permit reply evidence if necessary.

Post-Hearing Procedures

The Hearing Officer will submit a written decision with reasons to the Director of Child Welfare and all parties to the Hearing. If there is no transcript, a full report of the proceedings is included. The decision of the Hearing Officer should be included in the Children's Aid Society's records.

The Director of Child Welfare will inform the parties in writing that the name(s) has or has not been expunged in accordance with the Hearing Officer's decision, and so direct the Registrar.

SUMMARY

- The Child Welfare Act gives alleged abusers named on the Child Abuse Register the right to request that their names be expunged.
- The Director of Child Welfare may grant such a request, or decide to give the alleged abuser an opportunity to have an Expunction Hearing before refusing the request.
- If a Hearing is to be held, the Director appoints a Hearing Officer and delegates the responsibility of deciding whether or not the name (s) should be expunged to that person after a full Hearing of the case.
- The procedures outlined in this paper reflect experience gained in responding to 104 requests for expunction and in 19 Hearings held between June, 1979 and December 1981.

